In the High Court of Judicature at Madras

Dated: 13.12.2007

Coram:

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Writ Appeal No.2389 of 2002
& C.M.P.No.4056 of 2002

1. The Registrar,
   Tamil Nadu Agricultural University,
   Coimbatore-641 003.

2. The Dean (Agri),
   Tamil Nadu Agricultural University,
   Coimbatore-641 003.

3. The Controller,
   Tamil Nadu Agricultural University,
   Coimbatore-641 003. .. Appellants/Respondent

vs.

K.Balasubramanian .. Respondent/Petitioner

Writ Appeal against the order of this Court dated 7.3.2002 in Writ Petition No.12958 of 1998. Petition filed under Article 226 of the constitution of India to issue a writ of mandamus directing the respondents 2 to 3 disburse the Death-cum-Retirement Gratuity U.G.C Arrears and arears due to revision of pension and gratuity in full with interest at 18% per annum on the said total amount.

For appellants : Ms.D.Geetha

For respondents : Mr.B.Ravi for Mr.C.R.Prasanan

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Judgment

(The Judgment of the Court was delivered by S.J.Mukhopadhaya,J)

The respondent-employee, who was in the services of the appellants-Tamil Nadu Agricultural University (hereinafter referred to as 'the University'), superannuated on 30.6.1992. The Death-cum-Retirement Gratuity (hereinafter referred to as 'the

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DCRG'), having been withheld on the ground that certain amounts be recovered from him, as some of the books were missing, the respondent-employee preferred Writ Petition No.12958 of 1998.

2. The learned single Judge, by order dated 7.3.2002, while holding that the respondent-Writ Petitioner is entitled to the DCRG amount along with other retiral benefits, after deducting a sum of Rs.18,297/-, directed the appellants-University to pay interest @ 6% per annum on such dues from the date of retirement till the date of payment of the amount due to him. The University has challenged the order of the learned single Judge in this Writ Appeal.

3. The very fact of the case is that the respondent-Writ Petitioner was initially appointed on 2.12.1961 in the erstwhile Agricultural College and Research Institute, which was subsequently converted into University. The respondent was absorbed in the services of the University and was appointed as Deputy Librarian in the year 1976 and as Librarian from 1982. On attaining the age of superannuation, he was relieved from the post with effect from 30.6.1992. On retirement, the third appellant-Controller of the University instructed the second appellant-Dean (Agriculture) of the University to disburse the DCRG after physical verification of the library books. The second appellant-Dean thereafter, vide communication dated 4.6.1993, directed the respondent-Writ Petitioner to go over to the Library to trace out the missing books, which according to the University, were 13,394 in number, of a value of Rs.6,59,077/-. On subsequent verification at different stages, part of missing books were traced and finally, the second appellant-Dean of the University, by his letter dated 4.10.1996, asked the third appellant-Controller of the University to disburse the DCRG after deducting a sum of Rs.18,297/-, which was the value of the books taken by the respondent-Writ Petitioner on loan. Inspite of such order of the second appellant-Dean, the respondent-Writ Petitioner, not having been paid the DCRG amount, requested the authorities to pay it after deducting a sum of Rs,18,297/-, but having failed to get the relief, had to move before this Court by way of Writ Petition No.12958 of 1998.

4. The learned counsel appearing for the respondent-Writ Petitioner before the learned single Judge contended that when the respondent had been allowed to retire without any reservations or conditions, any attempt on the part of the University to withhold the retirement benefits, was without any justification. It was brought to the notice of the Court that the authorities allowed the respondent-Writ Petitioner to retire after handing over the charge to the Deputy Librarian of the University, who took charge from the respondent-Writ Petitioner on the date of his retirement.

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5. The stand of the appellants-University is that on physical verification, it was found that the total 13,394 books of the value of Rs.6,59,077/-, were found missing. Later on, some of the books were traced at the instance of the respondent-Writ Petitioner. In fact, the Committee constituted to verify the matter, which having found that the books were missing since long, it was decided by the University to adjust the amount from the DCRG of the respondent-Writ Petitioner.

6. Learned counsel appearing on behalf of the respondent-Writ Petitioner, while bringing the fact on record that subsequently, on verification at different stages, large number of books were traced, submitted that the genuineness of the report of the missing books is to be doubted. No action can be taken on the basis of such so-called verification report that the books were missing while the respondent-Writ Petitioner was charged of the post of Librarian. Learned counsel for the respondent-Writ Petitioner placed reliance on the decision of the Supreme Court reported in AIR 1990 SC 1923 (D.V.Kapoor vs. Union of India) and submitted that no amount can be recovered from the DCRG of the Writ Petitioner.

7. It is not in dispute that the respondent-Writ Petitioner was directed by the University to hand over the charge of the post of Librarian to the Deputy Librarian of the University by the second appellant-Dean's proceedings dated 30.6.1992. The respondent-Writ Petitioner's "Certificate of transfer of the charge" was signed by the respondent-Writ Petitioner and one Mr.R.Boriyan, Deputy Librarian of the University at Coimbatore on 30.6.1992. In the said charge report, no book was shown to be missing, nor any stipulation was made that such transfer of charge-responsibility accepted by the Deputy Librarian, was subject to the physical verification of books.

8. From the letter of the second appellant-Dean (Agriculture) of the University, dated 4.6.1993 addressed to the respondent-Writ Petitioner, it would be evident that the stock verification of the books was periodically made on 10.11.1992, 15.11.1992, 17.11.1992, 2.12.1992, etc. , upto 2.4.1993 and 23 reports were sent and at that stage, total number of shortage of books was calculated to be 13,394, costing Rs.6,59,077.32/-.

9. There is nothing on record to suggest that those books about 13,394 were missing while the respondent-Writ Petitioner was in the services of the University. Admittedly, periodical stock verification was done after five months of the retirement of the respondent-Writ Petitioner, which concluded on 2.4.1993.

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10. Admittedly, when the respondent-Writ Petitioner came to know that the University authorities were alleging missing of certain books, he himself offered to trace out the books and on 6.8.1993, he traced out 365 books of value of Rs.1,00,362.53, of which, first list was submitted. Subsequently also, the respondent-Writ Petitioner tried to trace the books from the Library and about 950 books were traced out from the same Library which was alleged to be missing.

11. From the letter of the respondent-Writ Petitioner, dated 27.8.1996, which has not been disputed by the University or its authorities, it is evident that following number of books were traced out by the respondent-Writ Petitioner from the said Library:

Sl.No.	Writ Petitioner's letter date addressed to the Dean, Through Dy. Librarian	No. of Books Traced out	Cost of Books mentioned in Col.3
1	06.08.1993	365	1,00,362.53
2	24.08.1993	127	1,02,019.60
3	01.10.1993	295	50,620.47
4	31.03.1995	163	25,296.61
	Total	950	2,78,299.21

12. The fact that on physical verification about 13,394 number of books were shown to be missing, and the respondent-Writ Petitioner traced out 950 books from the same Library while he visited four times after retirement, came to the notice of the first appellant-Registrar of the University-vide his letter, addressed to the second appellant-Dean dated 19.3.1995. Since there was various doubts relating to the genuineness of list of missing books, the first appellant-Registrar directed to critically examine the matter, and only after completion of the physical verification and after all possible efforts were made to locate the books, it was ordered to finally determine the total number of books.

13. There is nothing on record to suggest that any charge was framed against the respondent-employee, alleging negligence of duty, thereby causing loss of library books. No allegation was made that any of the books was misappropriated by the respondent-Writ Petitioner. Without making such enquiry in departmental proceedings and without giving an opportunity for the respondent-employee to put forth his case, based on the so-called verification report of the University, it was ordered to deduct a sum of Rs.6,59,077/- i.e. total cost of 13,394 books from the DCRG amount due to the respondent-Writ Petitioner.

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14. The aforesaid fact also came to the notice of the second appellant-Dean (Agriculture), who vide letter dated 6.9.1996, requested the first appellant-Registrar of the University to deduct only a sum of Rs.18,297/- from the DCRG amount of the respondent, towards the cost of 37 books and two dead stock materials, which were taken on loan by the respondent during his tenure of service.

15. In view of the fact that there is no evidence on record that 13,394 number of books were missing while the respondent-employee was in service; the fact that the respondent-employee handed over the charge of the post of Librarian to the Deputy Librarian on 30.6.1992 (i.e. the date of superannuation of the respondent-employee) and no objection was raised relating to missing of any book; the fact that no enquiry was conducted giving opportunity to the respondent-employee to put forth his defence nor any charge was framed against him that any book was missing while he was in service and the fact that no finding has been given by any competent authority that the books were missing when the respondent-Writ Petitioner was in service, coupled with the fact that 950 books out of 13,394 books were subsequently traced out from the same Library by the respondent-Writ Petitioner, we are of the view that no penal action can be taken against the respondent-employee by deducting part of his DCRG on the basis of the so-called verification report of the University.

16. We find that no ground has been made out to differ with the findings of the learned single Judge, who rightly allowed the Writ Petition in part, with a direction to the appellants-University to pay the retiral benefits including the DCRG after deducting a sum of Rs.18,297/- along with interest @ 6% p.a. from the date of retirement of the respondent-Writ Petitioner till the date of payment of the amount due to him.

17. It is informed that only due to the pendency of this Writ Appeal, the DCRG and other retiral benefits to which the respondent-employee is entitled to, have not yet been paid.

18. We do not appreciate such action of the appellants-University which was supposed to pay the DCRG and other retiral benefits, including the interest, subject to the decision of this Writ Appeal, in the absence of any specific order of the Court not to pay such benefits to the respondent-employee.

19. In the above said background of the case, while we dismiss this Writ Appeal, we enhance the rate of interest and direct the appellants-University to pay the amounts due (retiral benefits + DCRG due) with minimum interest @ 10.5% per annum

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(which a senior citizen is entitled to) on such admitted dues of retiral benefits, (including the DCRG) from the date of retirement of the respondent-Writ Petitioner till the date of payment and the amounts should be paid within a period of two months from the date of receipt of a copy of this judgment, failing which the appellants-University will pay the costs of Rs.20,000/- (Rupees twenty thousand only) to the respondent-Writ Petitioner, in addition to the above said amounts due. But in the circumstances of the case, there shall be no order as to costs. C.M.P. is closed.

20. Let a copy of this judgment be handed over to the parties free of cost.

Cs

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar,
   Tamil Nadu Agricultural University,
   Coimbatore-641 003.

2. The Dean (Agri),
   Tamil Nadu Agricultural University,
   Coimbatore-641 003.

3. The Controller,
   Tamil Nadu Agricultural University,
   Coimbatore-641 003.

4. Mr. K. Balasubramanian, Librarian (Retd)
   "Parvathy Nilayam"
   No.21, Yamuna Street,
   Curio Garden Avenue,
   Bharathiar University Post, Coimbatore.

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- 1 cc to Ms. D. Geetha Advocate SR No. 74044
- 1 cc to Mr. C. R. Parasaran, Advocate SR No. 74034

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Writ Appeal No.2389 of 2002

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